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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
| Jose Luis Koyoc,            | ) | CV 13-09165-RSWL (AGR <sub>x</sub> ) |
|                             | ) |                                      |
| Plaintiff,                  | ) |                                      |
|                             | ) | <b>ORDER RE: DEFENDANT'S</b>         |
| v.                          | ) | <b>MOTION TO COMPEL</b>              |
|                             | ) | <b>ARBITRATION AND DISMISS</b>       |
|                             | ) | <b>OR, ALTERNATIVELY, STAY</b>       |
|                             | ) | <b>ACTION [18]</b>                   |
| Progress Financial Company  | ) |                                      |
| and Does 1 to 10 inclusive, | ) |                                      |
|                             | ) |                                      |
|                             | ) |                                      |
| Defendants.                 | ) |                                      |

Currently before the Court is Defendant Progress Financial Company's ("Defendant") Motion to Compel Arbitration and Dismiss or, Alternatively, Stay Action [18]. The Court, having reviewed all papers submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** The Court **GRANTS** Defendant's Motion.

**I. BACKGROUND**

Plaintiff Jose Luis Koyoc ("Plaintiff") is a California resident who obtained a loan from Defendant.

1 Compl. ¶ 3. Defendant is a Delaware corporation in the  
 2 business of making consumer loans, and is licensed to  
 3 make loans in the state of California. Rodriguez Decl.  
 4 ¶ 2.

5 On or about July 2, 2013, Plaintiff applied for a  
 6 loan from Defendant. Rodriguez Decl. ¶ 4, Ex. A. On  
 7 July 21, 2013, Defendant approved Plaintiff's  
 8 application, and Plaintiff obtained a loan for  
 9 \$2,600.00. Id. at ¶ 5, Ex. B. Plaintiff signed  
 10 various agreements governing his loan, including a  
 11 Truth-in-Lending Disclosure and Loan Agreement ("Loan  
 12 Agreement"), an Arbitration Agreement, and a  
 13 Disclosures and Acknowledgments for Customers document  
 14 ("Consent Agreement"), (collectively, "Agreements").  
 15 Id.<sup>1</sup>

16 The Loan Agreement<sup>2</sup> sets forth the terms and  
 17 conditions of Plaintiff's loan, including an agreement  
 18 to be bound by the terms of the Arbitration Agreement.  
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20 <sup>1</sup> The Agreements signed by Plaintiff are in Spanish and are  
 21 attached collectively as Exhibit B to the Rodriguez Declaration.  
 22 English translations of the Agreements are attached collectively  
 as Exhibit C to the Rodriguez Declaration.

23 <sup>2</sup> The Loan Agreement reads, in relevant part:  
 24 **15. Arbitration.** You acknowledge that you have read,  
 25 understand, and agree to the terms contained in the  
 26 Arbitration Agreement you are signing in connection with  
 27 this Agreement. By entering into the Arbitration  
 28 Agreement, you waive certain rights, including the  
 right to go to court, to have a dispute heard by a jury,  
 and to participate as part of a class of claimants  
 relating to any claim against or dispute with us or a  
 related third party . . . .  
 Rodriguez Decl. ¶¶ 5-6, 7, Exs. B-C.

1 Id. at ¶ 7, Exs. B-C.

2 The Arbitration Agreement<sup>3</sup> sets forth the  
3 limitations of arbitration provisions. Id. at ¶ 8,  
4 Exs. B-C. It also expressly obtains Plaintiff's  
5 consent to arbitration and sets forth the scope of  
6 Plaintiff's consent. Id. at ¶ 8, Exs. B-C.

7 The Consent Agreement<sup>4</sup> sets forth the limitations  
8 of Defendant's e-mail and phone communications with  
9 Plaintiff regarding his loan. Id. at ¶ 9, Exs. B-C.

10 Plaintiff alleges that he received several  
11 telephone calls to his cell phone from Defendant in an  
12

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13 <sup>3</sup> The Arbitration Agreement reads, in relevant part:  
14 Any and all claims, controversies, or disputes arising  
15 out of or related in any way to that Truth-in-Lending  
16 Disclosure and Loan Agreement entered into by you and us  
17 on the same date as this Arbitration Agreement shall be  
18 subject to binding arbitration . . . [t]his includes,  
without limitation, (1) all issues concerning the  
transaction in connection with which this Arbitration  
Agreement has been executed . . . .  
Rodriguez Decl. ¶¶ 5-6, 8, Exs. B-C.

19 <sup>4</sup> The Consent Agreement reads, in relevant part:  
20 **Authorization to be Called and to be Sent SMS Text**  
21 **Messages to Your Mobile Phone, and to Receive Electronic**  
22 **Communications**  
23 You agree that you will accept calls, SMS text messages,  
24 e-mails and other electronic communications from us  
25 regarding your loan application, your loan payments, the  
26 collection of your loan account, promotions and other  
27 important communications. You understand these calls  
28 could be automatically dialed and a recorded message may  
be played. You agree that we may leave a voicemail  
message on your mobile phone or send you a SMS text  
message to your mobile phone, which may include  
information about the delinquency status of your account.  
You agree that such calls and electronic communications  
will not be unsolicited calls for purposes of state and  
federal law.  
Rodriguez Decl. ¶¶ 5-6, 9, Exs. B-C.

1 attempt to collect the debt owed on his loan. Compl.  
2 ¶¶ 7-10. Plaintiff claims that these calls were made  
3 with such frequency as to be unreasonable under the  
4 circumstances and to constitute harassment. Id. at ¶  
5 11.

6 Plaintiff claims that he received an unspecified  
7 number of calls from Defendant even after Plaintiff's  
8 attorney (1) requested that Defendant cease contacting  
9 Plaintiff and (2) requested that Defendant direct all  
10 future correspondences regarding Plaintiff to  
11 Plaintiff's attorney. Id. at ¶ 15.

12 Plaintiff further alleges that on or about  
13 September 19, October 3, October 24, and November 14,  
14 2013, Defendant sent Plaintiff collection letters. Id.  
15 at ¶¶ 16-21, Exs. B-D, F.

16 Plaintiff maintains that the debt collection  
17 practices employed by Defendant were in violation of  
18 the Rosenthal Fair Debt Collection Practices Act  
19 ("Rosenthal Act"), Cal. Civ. Code § 1788, and the  
20 Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §  
21 227. Id. at ¶¶ 1, 34, 38.

22 As a result of Defendant's alleged violations,  
23 Plaintiff seeks actual and statutory damages, costs,  
24 and reasonable attorneys' fees.

25 On December 12, 2013, Plaintiff filed the Complaint  
26 against Defendant [1].

27 Defendant filed the instant Motion on March 17,  
28 2014 [18]. Plaintiff filed an Opposition on March 25,

1 2014 [21]. Defendant filed a Reply on April 1, 2014  
2 [22]. This matter was set for hearing on April 15,  
3 2014, and was taken under submission on April 7, 2014  
4 [23].

## 5 **II. LEGAL STANDARD**

6 The Federal Arbitration Act ("FAA") provides that a  
7 "written provision in any . . . contract evidencing a  
8 transaction involving commerce to settle by arbitration  
9 a controversy thereafter arising out of such contract  
10 or transaction . . . shall be valid, irrevocable, and  
11 enforceable, save upon such grounds as exist at law or  
12 in equity for the revocation of any contract." 9  
13 U.S.C. § 2. As explained by the Supreme Court in Dean  
14 Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1984),  
15 "the Act leaves no place for the exercise of discretion  
16 by a district court, but instead mandates that district  
17 courts shall direct the parties to proceed to  
18 arbitration on issues as to which an arbitration  
19 agreement has been signed."

20 Therefore, the FAA establishes a federal policy  
21 favoring arbitration of disputes and creates a rule of  
22 contract construction favoring arbitration. See Gilmer  
23 v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24-25  
24 (1991) (FAA manifests a "liberal federal policy  
25 favoring arbitration agreements"); Moses H. Cone Mem'l  
26 Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25  
27 (1983) ("[A]ny doubts concerning the scope of  
28 arbitrable issues should be resolved in favor of

1 arbitration . . . ."); Kuehner v. Dickinson & Co., 84  
 2 F.3d 316, 319 (9th Cir. 1996). The Act's purpose is to  
 3 encourage arbitration and to permit parties who have  
 4 agreed to arbitrate disputes to proceed without court-  
 5 imposed delay.

6 In ruling on an application or petition to compel,  
 7 the court may inquire only as to: (1) whether a valid  
 8 agreement to arbitrate exists and, if it does, (2)  
 9 whether the agreement encompasses the dispute at issue.  
 10 Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d  
 11 1126, 1130 (9th Cir. 2000). If the response is  
 12 affirmative on both counts, then the FAA requires the  
 13 court to enforce the arbitration agreement in  
 14 accordance with its terms. Id.

15 The party resisting arbitration bears the burden of  
 16 showing that the arbitration agreement is invalid or  
 17 does not encompass the claims at issue. Green Tree  
 18 Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 91-92  
 19 (2000). Where the arbitration provision is broad,  
 20 there is a heightened presumption in favor of  
 21 arbitration such that the party resisting arbitration  
 22 must show "forceful evidence of a purpose to exclude  
 23 the claim from arbitration . . . ." AT&T Techs., Inc.  
 24 v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986)  
 25 (quoting United Steelworkers of Am. v. Warrior & Gulf  
 26 Navigation Co., 363 U.S. 574, 585 (1960)).

### 27 III. ANALYSIS

#### 28 A. A Valid Agreement To Arbitrate Exists

1       The Court finds that a valid, enforceable agreement  
2 to arbitrate exists between the Parties. Arbitration  
3 agreements are generally presumed to be valid and  
4 enforceable. Chiron, 207 F.3d at 1130. The party  
5 seeking to avoid arbitration bears the burden of  
6 demonstrating the arbitration agreement is invalid or  
7 unenforceable. Green Tree, 531 U.S. at 91.

8       Here, it is clear that Plaintiff signed the  
9 Arbitration Agreement. Rodriguez Decl. ¶¶ 5-6, Exs. B-  
10 C. By signing the Arbitration Agreement, Plaintiff  
11 manifested assent to its terms. Further, Plaintiff  
12 expressly states that he does not dispute that he  
13 signed a valid, enforceable agreement with Defendant  
14 containing an agreement to arbitrate "[a]ny and all  
15 claims, controversies, or disputes arising out of or  
16 related in any way to that Truth-in-Lending Disclosure  
17 and Loan Agreement . . . ." Opp'n 5:1-5; Rodriguez  
18 Decl. ¶¶ 5-6, 8, Exs. B-C. Additionally, Plaintiff  
19 does not dispute that the arbitration agreement  
20 expressly covers "all issues concerning the transaction  
21 in connection with which this Arbitration Agreement has  
22 been executed . . . ." Opp'n 5:6-8; Rodriguez Decl. ¶¶  
23 5-6, 8, Exs. B-C.

24       While Plaintiff initially submits that the  
25 Arbitration Agreement is valid and enforceable,  
26 Plaintiff argues that nevertheless the Rosenthal Act  
27 prohibits a waiver of rights to a jury trial and  
28 "therefore the arbitration clause is void and

1 unenforceable." Opp'n 8:24; 9:25-10:2. Plaintiff  
2 points to Cal. Civ. Code §§ 1788.30(a), 1788.30(b),  
3 1788.30(c), 1788.30(f)<sup>5</sup> and 1788.33<sup>6</sup> to support his  
4 argument that he is entitled to bring a suit "in any  
5 court of competent jurisdiction" for actual damages, a  
6 penalty, and reasonable attorneys' fees arising from  
7 the Rosenthal Act violations, and that these rights  
8 cannot be waived. Id. at 9:25-10:2.

9 The Court finds that the Rosenthal Act does not  
10 render the Arbitration Agreement void and  
11 unenforceable. First, Cal. Civ. Code §§ 1788.30 and  
12 1788.33 do not expressly provide a debtor with a right  
13 to a jury trial and do not contain provisions  
14 prohibiting a waiver of such rights. See Cal. Civ.  
15 Code §§ 1788.30, 1788.33.

16 Additionally, 9 U.S.C. § 2 permits arbitration  
17 agreements to be declared unenforceable "upon such  
18 grounds as exist in law or in equity for the revocation  
19 of any contract." AT&T Mobility LLC v. Conception, 131  
20 S.Ct. 1740, 1744 (2011) (citing 9 U.S.C. § 2). "This  
21 saving clause permits agreements to arbitrate to be  
22 invalidated by 'generally applicable contract defenses,  
23

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24  
25 <sup>5</sup> Cal. Civ. Code § 1788.30(f) states: "Any action under this  
26 section may be brought in any appropriate court of competent  
jurisdiction in an individual capacity only, within one year from  
the date of the occurrence of the violation."

27 <sup>6</sup> Cal. Civ. Code § 1788.33 states: "Any waiver of the  
28 provisions of this title is contrary to public policy, and is  
void and unenforceable."

1 such as fraud, duress, or unconscionability,' but not  
2 by defenses that apply only to arbitration or that  
3 derive their meaning from the fact that an agreement to  
4 arbitrate is at issue." Id. (citing Doctor's Assocs.  
5 Inc. v. Casarotto, 517 U.S. 681, 687 (1996) and Perry  
6 v. Thomas, 482 U.S. 483, 492 n.9 (1987) (recognizing  
7 that "state law, whether of legislative or judicial  
8 origin, is applicable if that law arose to govern  
9 issues concerning the validity, revocability, and  
10 enforceability of contracts generally.")). Thus, "[t]o  
11 ensure that arbitration agreements are enforced  
12 according to their terms, the FAA preempts all state  
13 laws that apply of their own force to limit those  
14 agreements against the parties' will or to withdraw the  
15 power to enforce them." Cronus Invs., Inc. v.  
16 Concierge Servs., 35 Cal. 4th 376, 385 (2005).

17 To declare the Arbitration Agreement unenforceable,  
18 Plaintiff must assert a generally applicable contract  
19 defense, such as fraud, duress, or unconscionability.  
20 AT&T Mobility, 131 S.Ct. at 1744. Here, Plaintiff  
21 makes no substantive allegation of fraud, duress or  
22 unconscionability<sup>7</sup>; Plaintiff merely asserts that a  
23 \_\_\_\_\_

24 <sup>7</sup> While Plaintiff makes a statement that "Plaintiff signed  
25 the boilerplate contract of adhesion that included the subject  
26 arbitration clause" in his Opposition memorandum (Opp'n 8:25-26),  
27 Plaintiff does not provide any argument as to why the Arbitration  
28 Agreement or Loan Agreement was a contract of adhesion. An  
adhesion contract is a "standardized contract, which, imposed and  
drafted by the party of superior bargaining strength, relegates  
to the subscribing party only the opportunity to adhere to the

1 waiver of a right to bring an individual TCPA claim in  
 2 a court of competent jurisdiction is against public  
 3 policy. It is not entirely clear that Cal. Civ. Code §  
 4 1788.30 would proscribe Plaintiff from submitting his  
 5 claims to arbitration. In any event, Plaintiff's  
 6 argument is plainly belied by the fact that courts have  
 7 held that Rosenthal Act claims are arbitrable. Ferrini  
 8 v. Cambece, 2:12-CV-01954 TLN, 2013 WL 2421717, at \*1  
 9 (E.D. Cal. June 3, 2013) (finding that a plaintiff's  
 10 Rosenthal Act claim is subject to arbitration); Evans  
 11 v. Williams & Fudge, Inc., No. 12cv0746 JM(WMc), 2012  
 12 WL 3025164, at \*2 (S.D. Cal. July 24, 2012) (same);  
 13 Hartung v. J.D. Byrider, Inc., No.  
 14 1:08-cv-00960-AWI-GSA, 2008 WL 4615044, at \*1 (E.D.  
 15 Cal. Oct. 17, 2008) report and recommendation adopted,  
 16 No. 1:08-cv-00960 AWI GSA, 2008 WL 5247714 (E.D. Cal.

17 \_\_\_\_\_  
 18 contract or reject it." Laster v. T-Mobile USA, Inc., 407 F.  
 19 Supp. 2d 1181, 1187 (S.D. Cal. 2005) (citing Armendariz v. Found.  
 20 Health Psychcare Servs., Inc., 24 Cal. 4th 83, 113 (2000)).  
 21 Here, there are no allegations that Plaintiff lacked the  
 22 opportunity to negotiate the terms of the Loan or Arbitration  
 23 Agreements. Absent any allegations to support Plaintiff's  
 24 statement that he signed a contract of adhesion, the Court  
 25 declines to find that Plaintiff signed a contract of adhesion.  
 26 Further, an adhesion contract is unconscionable when *both*  
 27 procedural and substantive unconscionability are present. Id.  
 28 (citing Armendariz, 24 Cal. 4th at 114). A party challenging an  
 arbitration agreement has the burden to prove both procedural and  
 substantive unconscionability. Id. (citing Crippen v. Cent.  
Valley RV Outlet, Inc., 124 Cal. App. 4th 1159, 1165 (2004)).  
 Here, Plaintiff makes no allegation that the Loan or Arbitration  
 Agreements are procedurally or substantively unconscionable.  
 Therefore, even if Plaintiff signed a contract of adhesion,  
 Plaintiff fails to meet his burden of proving procedural and  
 substantive unconscionability.

1 Dec. 17, 2008) (same).

2 Accordingly, because Plaintiff signed the  
3 Arbitration Agreement and manifested assent to its  
4 terms, the Court finds that a valid, enforceable  
5 agreement to arbitrate exists between the Parties.

6 **B. Plaintiff's Claims Fall Within the Scope of the**  
7 **Arbitration Agreement**

8 Where a valid, enforceable arbitration agreement  
9 exists, courts must determine whether the claims fall  
10 within the scope of the arbitration agreement. Chiron,  
11 207 F.3d at 1130. In so doing, the Court is cognizant  
12 of the FAA's federal policy favoring arbitration  
13 agreements:

14 The Arbitration Act establishes that, as a  
15 matter of federal law, any doubts concerning  
16 the scope of arbitrable issues should be  
17 resolved in favor of arbitration, whether the  
18 problem at hand is the construction of the  
19 contract language itself or an allegation of  
20 waiver, delay, or a like defense to  
21 arbitrability.

22 Id. (citing Moses, 460 U.S. at 24-25). To require  
23 arbitration, Plaintiff's claims need only "touch  
24 matters" covered by the contract containing the  
25 arbitration provision. Lewis v. UBS Fin. Servs. Inc.,  
26 818 F. Supp. 2d 1161, 1165 (N.D. Cal. 2011) (citing  
27 Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 721 (9th  
28 Cir. 1999)).

1       The TCPA prohibits, among other things, certain  
2       unsolicited marketing calls and the use of automatic  
3       dialers or prerecorded messages. 47 U.S.C. §§  
4       227(b)(1)(A), 227(b)(1)(B). Plaintiff alleges that  
5       Defendant violated the TCPA by calling him using an  
6       automatic telephone dialing system or an artificial  
7       prerecorded voice. Compl. ¶ 38.

8       The Rosenthal Act prohibits debt collectors from  
9       engaging in abusive, deceptive and unfair practices in  
10      connection with the collection of consumer debts.  
11      Vargas v. Bank of Am., N.A., No. 12-cv-2247-L(MDD),  
12      2013 WL 1386342, at \*2 (S.D. Cal. April 4, 2013).  
13      Plaintiff alleges that Defendant violated several  
14      provisions of the Rosenthal Act, among which include  
15      (1) communicating with Plaintiff with such frequency as  
16      to be unreasonable and to constitute harassment, (2)  
17      communicating with Plaintiff in connection with the  
18      collection of the debt, knowing that Plaintiff was  
19      represented by an attorney, and (3) engaging in  
20      conduct, the natural consequence of which is to harass,  
21      oppress, or abuse any person in connection with the  
22      collection of the alleged debt. Compl. ¶ 34.

23      The record here leaves little doubt that the  
24      dispute is arbitrable. The arbitration clause is broad  
25      and far-reaching, stating, in relevant part:

26      **1. Dispute Resolution by Arbitration:** Any and  
27      all claims, controversies, or disputes arising  
28      out of or related in any way to that Truth-in-

1 Lending Disclosure and Loan Agreement entered  
 2 into by you and us on the same date as this  
 3 Arbitration Agreement shall be subject to  
 4 binding arbitration . . . [t]his includes,  
 5 without limitation, (1) all issues concerning  
 6 the transaction in connection with which this  
 7 Arbitration Agreement has been executed . . . ."

8 Rodriguez Decl. ¶¶ 5-6, 8, Exs. B-C.

9 By the explicit terms of the Arbitration Agreement,  
 10 Plaintiff agreed to arbitrate "all claims,  
 11 controversies, or disputes arising out of or *related in*  
 12 *any way* to that Truth-in-Lending Disclosure and Loan  
 13 Agreement." Rodriguez Decl. ¶¶ 5-6, 8, Exs. B-C  
 14 (emphasis added). The Arbitration Agreement contains  
 15 broad "relating to" language, and the Court accordingly  
 16 reads the clause broadly. See Cayanan v. Citi  
 17 Holdings, Inc., 928 F. Supp. 2d 1182, 1208 (S.D. Cal.  
 18 2013) (noting that because the arbitration agreements  
 19 contain broad "relating to" language, the court  
 20 accordingly reads the clauses broadly").

21 Plaintiff obtained a loan from Defendant pursuant  
 22 to the Loan Agreement for \$2,600. Rodriguez Decl. ¶¶  
 23 5-6, Exs. B-C. As Plaintiff admits, Defendant  
 24 contacted Plaintiff to collect money purportedly owed  
 25 by Plaintiff on the loan. Compl. ¶ 7. Thus,  
 26 Plaintiff's claims are based upon alleged calls made to  
 27 his cell phone in connection with his loan. Under the  
 28 terms of the Loan Agreement, Plaintiff promised to pay

1 back the loan<sup>8</sup>. Thus, Defendant's attempt to collect on  
2 that loan, and, by extension, the manner in which  
3 Defendant attempted to collect that loan, is "related  
4 to" the Loan Agreement. As such, the Court finds that  
5 Plaintiff's claims "relate to" the Loan Agreement and  
6 are within the scope of the Arbitration Agreement.

7 Further, the broad terms of the Arbitration  
8 Agreement likely contemplate claims related to the  
9 collection activities with regard to the loan. See  
10 Evans, 2012 WL 3025164, at \*2 (finding that the  
11 language "relating to any claim or dispute arising out  
12 of the Promissory Note" is broad enough to encompass  
13 *collection efforts* related to the Promissary Note).  
14 Thus, the Court finds that Plaintiff's claims relate to  
15 his alleged failure to make payments as required by the  
16 Loan Agreement.

17 In his Opposition memorandum, Plaintiff relies on  
18 In re Jiffy Lube Int'l, Inc., 847 F. Supp. 2d 1253  
19 (S.D. Cal. 2012), in which the court denied a motion to  
20 compel arbitration of a TCPA claim. In Jiffy Lube,  
21 plaintiffs signed arbitration agreements in connection  
22 with oil change services with Jiffy Lube. Id. at 1262.  
23 Consumers filed a class action alleging that Jiffy Lube  
24 sent them text messages related to the marketing of  
25

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26 <sup>8</sup> The Loan Agreement, states, in relevant part: "1. Promise  
27 to Pay (Loan Total (g)). In return for a loan that you receive,  
28 you promise to pay \$[Principal], plus interest, to the order of  
Progress Financial."

1 future services in violation of the TCPA. The court  
2 noted that the language of the arbitration agreement in  
3 Jiffy Lube was incredibly broad as it purported to  
4 apply to "any and all disputes" between the parties and  
5 did not limit its disputes arising from or related to  
6 the transaction or contract at issue. Id. at 1263.

7 Jiffy Lube is inapposite to the case here. Here,  
8 the Arbitration Agreement is not incredibly broad as it  
9 limits claims subject to arbitration to those that are  
10 "related in any way" to the "Truth-in-Lending  
11 Disclosure and Loan Agreement." Rodriguez Decl. ¶ 8.  
12 Thus, the Arbitration Agreement here explicitly limits  
13 its disputes to those related to the loan that  
14 Plaintiff obtained from Defendant. Plaintiff admits  
15 that Defendant's calls were made in connection with his  
16 loan. See Compl. ¶ 7. Because the calls concerned  
17 Plaintiff's borrowed loan from Defendant and  
18 Plaintiff's responsibility in paying off that loan  
19 pursuant to the Loan Agreement, the calls made to  
20 Plaintiff were related to the Loan Agreement and are  
21 within the scope of the Arbitration Agreement.

22 Plaintiff also argues that tort claims (such as his  
23 TCPA claim) that arise from a breach of duty created by  
24 law that is owed to others are not arbitrable. Opp'n  
25 6:9-11. However, while Plaintiff's TCPA claim is a  
26 statutory tort claim, such claims are not inherently  
27 un-arbitrable. Cayanan, 928 F. Supp. 2d at 1207-08  
28 (citing McNamara v. Royal Bank of Scotland Grp., PLC,

1 No. 11-cv-2137-L(WVG), 2012 WL 5392181, at \*6-7, (S.D.  
 2 Cal. Nov. 5, 2012) (compelling arbitration of TCPA  
 3 claim); Knutson v. Sirius XM Radio Inc., No. 12cv418  
 4 AJB (NLS), 2012 WL 1965337, at \*3, (S.D. Cal. May 31,  
 5 2012) (same), and Gonzalez v. Citigroup, Inc., No. CIV.  
 6 S-11-0795 LKK/GGH, 2011 WL 5884250 (E.D. Cal. Nov. 22,  
 7 2011) (same)).

8 Plaintiff further argues that his TCPA claim does  
 9 not "relate to" the Loan Agreement because it is  
 10 independent from any breach of and can be maintained  
 11 without reference to the Loan Agreement. Opp'n 8:13-  
 12 23.

13 When a tort claim constitutes an "independent wrong  
 14 from any breach" of the contract, it "does not require  
 15 interpretation of the contract and is not arbitrable."  
 16 Cape v. Flattery Ltd. v. Titan Maritime LLC, 647 F.3d  
 17 914, 922 (9th Cir. 2011) (citing Tracer Research Corp.  
 18 v. Nat'l Env'tl. Servs. Co., 42 F.3d 1292, 1295 (9th  
 19 Cir. 1994)). Here, the Court finds that Plaintiff's  
 20 TCPA claim is not an "independent wrong" from the  
 21 breach of the Loan Agreement. The Arbitration  
 22 Agreement states that claims, controversies or  
 23 disputes, which include "the *transaction* in connection  
 24 with which this Arbitration Agreement has been  
 25 executed," are subject to arbitration. Rodriguez Decl.  
 26 ¶¶ 5-6, 8, Exs. B-C. When applying for a loan from  
 27 Defendant, Plaintiff signed a Loan Agreement,  
 28 Arbitration Agreement, and Consent Agreement. Id. at

¶¶ 5-6, Exs. B-C. The Consent Agreement provides in relevant part that: "[Plaintiff] agree[s] that [Plaintiff] will accept calls, SMS text messages, e-mails and other electronic communications from [Defendant] regarding your loan application, your loan payments, the collection of your loan account, promotions and other important communications." Id. at ¶ 9, Exs. B-C. Therefore, the determination of Plaintiff's TCPA claim arises directly from and relates to his loan from Defendant and necessarily requires interpretation of the Loan Agreement and related Consent Agreement. As such, the Court finds that Plaintiff's TCPA claim does not constitute an independent wrong from any breach of the Agreements and is arbitrable.

In light of the broad language in the Arbitration Agreement, and taking into account the liberal federal policy favoring arbitration agreements, the Court finds that Plaintiff's claims arise directly from and relate to Plaintiff's loan with Defendant, and therefore fall within the scope of the Arbitration Agreement. Therefore, the Court **GRANTS** Defendant's Motion to Compel Arbitration.

Where a dispute is subject to arbitration under the terms of a written agreement, the district court shall "stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." Lewis, 818 F. Supp. 2d at 1169 (citing 9

1 U.S.C. § 3). The Ninth Circuit, however, has held that  
2 courts have discretion under 9 U.S.C. § 3 to dismiss  
3 claims that are subject to an arbitration agreement.  
4 Id. (citing Sparling v. Hoffman Const. Co., Inc., 864  
5 F.2d 635, 638 (9th Cir. 1988)). Because the claims  
6 here are subject to arbitration, dismissal is  
7 appropriate. Therefore, the Court **DISMISSES** this  
8 action **with prejudice**.

9 **IV. CONCLUSION**

10 For the reasons set forth above, the Court **GRANTS**  
11 Defendant's Motion to Compel Arbitration and **DISMISSES**  
12 this Action **with prejudice**. The Court also **DENIES as**  
13 **moot** Defendant's Request for Judicial Notice [24].

14  
15 **IT IS SO ORDERED.**

16  
17 DATED: May 9, 2014

RONALD S.W. LEW

18 **HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge